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U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re 3Com Corporation

Serial No. 74/495,184

Michael J. Hughes of The Intellectual Property Law Office of
Michael J. Hughes for 3Com Corporation.

Jennifer E. McGarry, Trademark Examining Attorney, Law Office 102
(Thomas Shaw, Managing Attorney).

Before Cissel, Bottorff and Holtzman, Administrative Trademark
Judges.

Opinion by Holtzman, Administrative Trademark Judge:

An application has been filed by 3Com Corporation to
register ATMLINK as a mark for goods which were subsequently
amended to the following:¹

Computer networking and asynchronous communication
components; namely, adapters, cabling, connectors, and
software associated therewith, all for asynchronous

¹ Serial No. 74/495,184; filed February 28, 1994 on the Principal
Register as an intent-to-use application under Section 1(b) of the
Trademark Act. On July 24, 1995, applicant filed an amendment to
allege use asserting a date of first use of June 30, 1995. The
amendment to allege use was followed by an amendment to seek
registration on the Supplemental Register.

communication computer networking connectivity purposes, all for use in local, metropolitan, and global area network environments. (In Class 9).

Registration has been finally refused under Section 23 of the Trademark Act on the ground that ATMLINK, as used in connection with the identified goods, is generic and thus incapable of identifying applicant's goods and distinguishing them from those of others.

Applicant has appealed.² Briefs have been filed, but an oral hearing was not requested. We affirm the refusal to register.

The Office has the burden of proving genericness by "clear evidence" thereof. In re Merrill Lynch, Pierce, Fenner & Smith, Inc., 828 F.2d 1567, 4 USPQ2d 1141 (Fed. Cir. 1987). Determining whether a mark is generic involves a two-step analysis. The first step is to identify the category of goods at issue. The second step is to determine whether the term sought to be registered is understood by the relevant public primarily to

² This case was reassigned to a different Examining Attorney to write the appeal brief and the new Examining Attorney requested a remand of the case in order to supplement the existing record. The Board granted the remand and the Examining Attorney filed her supplemental action. Although the Board then allowed applicant time to file a supplemental brief, applicant did not do so.

refer to that category or class of goods. See *In re American Fertility Society*, 188 F.3d 1341, 51 USPQ2d, 1832 (Fed. Cir. 1999) citing *H. Marvin Ginn Corporation v. International Association of Fire Chiefs, Inc.*, 782 F.2d 987, 228 USPQ 528 (Fed. Cir. 1986).

The Examining Attorney contends that the relevant public would understand ATMLINK as primarily referring to applicant's goods, that is, as a generic name of the communication line, channel or circuit, which uses asynchronous transfer mode technology. In support of her position, the Examining Attorney has submitted dictionary listings referring to ATM as an acronym for "Asynchronous Transfer Mode" and defining that term as:

A high-speed cell-switching network technology for LAN's [local area networks] and WAN's [wide area networks] that handles data and real time voice and video. It combines the high efficiency of packet switching used in data networks, with the guaranteed bandwidth of circuit switching used in voice networks. *The Computer Glossary. The Complete Illustrated Dictionary.* (7th ed. 1995). (Inserts added).

The word "LINK" is defined as:

(1) In communication, a line, channel or circuit over which data is transmitted...(3) In programming, a call to another program or subroutine. *Id.*

In order to further assist our understanding of the issue raised by the terminology and the products involved in this

appeal, we have taken judicial notice of additional dictionary definitions of the following terms:³

ATM [2] ATM's connection-oriented design differs from the Internet's connectionless design. *Dictionary of Computer Terms*. (6th ed. 1997).

LINK -- n. 1. A connection between computers, devices, programs, or files over which data is transmitted. *Dictionary of Computer Words*. (Revised 1995).

As further evidence of the relevant public's understanding of the term, the Examining Attorney has submitted over 100 excerpts of articles from the NEXIS database showing usage of "ATM link" primarily in computer and business publications. Examples of these references are reproduced below (emphasis added):

Services offered over the **ATM link** will include video-on-demand and the TV news service -- Anglia News.... Access to the **ATM link** will be over coaxial cable from the home to Cambridge Cable's fiber to the curb.... *Broadband Networking News*. (October 18, 1994).

...seven hospitals in the Dayton, Ohio area are connected via fiber optic lines and a T3-speed **ATM link** operating at 1.544 megabits per second, Krella said. IBM is providing the hardware and software for the trial... [d]isclose pricing for the service, but Price said costs will be custom-tailored and based on the speeds and distances of the **ATM links**. *CommunicationsWeek* (September 19, 1994).

... high speed backbone for interconnecting existing LAN routers and provide direct LAN connectivity over the fiber

³ The Board may properly take judicial notice of dictionary definitions, including definitions in technical reference works. See, e.g., *University of Notre Dame du Lac v. J. C. Gourmet Food Imports co., Inc.*, 213 USPQ 594, (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

optic **ATM links**. The network will support the University's educational and research activities. **ATM links** are planned to other ATM networks in Europe for ATM pilot projects. *Business Wire* (July 29, 1994).

... networks (WANS) by becoming the first vendor to equip carriers and enterprises with a standards-based system for deploying asynchronous transfer mode (ATM)* connections running at speeds between T1 (1.544 Mbps) and T3 (45 Mbps)....for ATM (IMA), a new standard** enabling T1 lines to be bundled together for the creation of variable-speed **ATM links** up to 12 Mbps... *M2 Presswire* (May 8, 1997).

Networld+Interop drew 60,000 people to see exhibits such as advanced demonstrations of asynchronous mode transfer edge devices for ATM-to-Ethernet links with LAN emulation, 622-megabit/sec OC-12 **ATM Links**, and 100Base-T and 100VG-AnyLAN networks deployed in parallel with Ethernets under distributed network management. *Government Computer News* (October 7, 1996).

... ATM network relies on seven 3Com CoreBuilder 7000 ATM switches and associated Ethernet workgroup devices. Dual **ATM links** are used to connect each of the switches in order to ensure reliability and scalability, Cronin said. *InternetWeek* (January 5, 1998).

... source addresses when congestion occurs, enabling the source to adjust traffic. This virtually eliminates congestion in the most heavily used **ATM links**, such as backbone interswitch links and connections to network servers. *PR Newswire* (June 24, 1997).

It is available as a blade for IBM's 8260 ATM switch or as a standalone device with a 155Mbps **ATM link** for connecting to any ATM switch thereby offering product independence. *LAN Times* (October 14, 1996).

It is applicant's position, on the other hand, that the NEXIS articles demonstrate descriptive, but not generic, usage of the phrase "ATMLINK." Applicant states that its goods "serve the...purpose of interconnecting and enabling communication

between computers." Noting that ATM and LINK do not appear as a single term in any of the articles, applicant believes the evidence fails to demonstrate "that anyone in the industry refers to [the] relevant hardware as anything but a 'link' designated by a descriptive adjective." According to applicant, the relevant public:

...does not refer to the relevant class of asynchronous transfer mode links as ATMLINK(s). In every noted instance, the public has referred to the hardware using descriptive words or the acronym ATM.

(Emphasis omitted).

Applicant also contends that its ownership of an asserted "family" of registered marks incorporating the word "LINK" (including registrations for ETHERLINK, TOKENLINK and LINKBUILDER) establishes that ATMLINK would be recognized as a mark for applicant's goods and that relevant purchasers would conclude that goods bearing the ATMLINK mark originate from the same source as those on which the registered marks are used.

The general category of applicant's goods can be described as computer hardware components used for enabling the connection of asynchronous communication networks. The evidence shows, and applicant does not appear to dispute, that ATM is an acronym for asynchronous transfer mode which is a type of network communication technology, referring particularly to a high-speed method of transmitting information over a computer network. The

evidence further indicates (again, without dispute by applicant) that a "link" for an ATM system is the hardware which provides the connection or path for the ATM transmissions. The NEXIS excerpts refer to, for example, an "ATM link" provided by fiber optic cable to interconnect a series of computer networks for hospitals. We can conclude from the evidence that an "ATM link" is a system of hardware components, the very components produced by applicant, which create the (ATM) connection, or link, between different computer networks or network systems. Thus, the evidence demonstrates that the relevant public, that is, the technologically sophisticated individuals who would be the primary purchasers or users of applicant's goods, would understand that ATMLINK refers to this class of goods.

Contrary to applicant's apparent contention, there is nothing in this record to show that ATMLINK as one word would be perceived as having a connotation which differs from ATM and LINK as a two-word term. As the Examining Attorney points out, the mere deletion of a space between the words ATM and LINK does not transform this otherwise generic term into a source indicator or change the commonly understood meaning of the term. See *In re Gould Paper Corp.*, 834 F.2d 1017, 5 USPQ2d 1110 (Fed. Cir. 1987) and, for example, *Micro Motion Inc. v. Danfoss A/S*, 49 USPQ2d 1628 (TTAB 1998).

Moreover, applicant's claim of an asserted family of "link" marks is of no persuasive value in this case. First, applicant has not established a family of "link" marks. The mere existence of a number of registrations containing a particular term does not make it a "family."⁴ The registrations fail to demonstrate source indicating function solely in the "link" portion of the marks. Even assuming the existence of a family of other "link" marks would not alter the generic nature of "link" in the present case and, thus, would not be evidence that ATMLINK would be perceived as a mark for the goods set forth in the application.

Decision: The refusal to register on the Supplemental Register on the ground that ATMLINK is generic in connection with the identified goods is affirmed.

R. F. Cissel

C. M. Bottorff

T. E. Holtzman
Administrative Trademark
Judges, Trademark Trial
and Appeal Board

⁴ In order to establish ownership of a family of marks, it must be shown that the marks containing the family feature have been used and promoted together in such a manner as to create public recognition and that the family feature is distinctive, i.e., not descriptive, highly suggestive, or commonly used in the trade. See *Marion Laboratories Inc. v. Biochemical/Diagnostics Inc.*, 6 USPQ2d 1215 (TTAB 1988). The descriptive meaning of "link" within the context of the present case is not disputed.